

Senate Engrossed House Bill

FILED

**KEN BENNETT
SECRETARY OF STATE**

State of Arizona
House of Representatives
Fiftieth Legislature
First Regular Session
2011

CHAPTER 214

HOUSE BILL 2208

AN ACT

AMENDING SECTIONS 49-424 AND 49-457, ARIZONA REVISED STATUTES; AMENDING TITLE 49, CHAPTER 3, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 49-457.05; RELATING TO AGRICULTURAL BEST MANAGEMENT PRACTICES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 49-424, Arizona Revised Statutes, is amended to
3 read:

4 49-424. Duties of department

5 The department shall:

6 1. Determine whether the meteorology of the state is such that
7 airsheds can be reasonably identified and air pollution, therefore, can be
8 controlled by establishing air pollution control districts within well
9 defined geographical areas.

10 2. Make continuing determinations of the quantity and nature of
11 emissions of air contaminants, topography, wind and temperature conditions,
12 possible chemical reactions in the atmosphere, the character of development
13 of the various areas of the state, the economic effect of remedial measures
14 on the various areas of the state, the availability, use,— and economic
15 feasibility of air-cleaning devices, the effect on human health and danger to
16 property from air contaminants, the effect on industrial operations of
17 remedial measures,— and other matters necessary to arrive at a better
18 understanding of air pollution and its control. In a county with a
19 population in excess of one million two hundred thousand persons according to
20 the most recent United States decennial census, the department shall locate a
21 monitoring system in at least two remote geographic sites.

22 3. ~~By July 1, 1997,~~ Establish substantive policy statements for
23 identifying air quality exceptional events that take into consideration this
24 state's unique geological, geographical and climatological conditions and any
25 other unusual circumstances. These substantive policy statements shall be
26 developed with the planning agency certified pursuant to section 49-406,
27 subsection A and the county air pollution control department or district.

28 4. Determine the standards for the quality of the ambient air and the
29 limits of air contaminants necessary to protect the public health, and to
30 secure the comfortable enjoyment of life and property by the citizens of the
31 state or in any defined geographical area of the state where the
32 concentration of air pollution sources, the health of the population, or the
33 nature of the economy or nature of land and its uses so require, and develop
34 and transmit to the county boards of supervisors minimum state standards for
35 air pollution control.

36 5. Conduct investigations, inspections and tests to carry out the
37 duties of this section under the procedures established by this article.

38 6. Hold hearings relating to any aspect of or matter within the duties
39 of this section, and in connection therewith, compel the attendance of
40 witnesses and the production of records under the procedures established by
41 section 49-432.

42 7. Prepare and develop a comprehensive plan or plans for the abatement
43 and control of air pollution in this state.

44 8. Encourage voluntary cooperation by advising and consulting with
45 persons or affected groups or other states to achieve the purposes of this

chapter, including voluntary testing of actual or suspected sources of air pollution.

9. Encourage political subdivisions of the state to handle air pollution problems within their respective jurisdictions, and provide as it deems necessary technical and consultative assistance therefor.

10. Compile and publish from time to time reports, data, and statistics with respect to those matters studied and investigated by the department.

11. DEVELOP AND DISSEMINATE AIR QUALITY DUST FORECASTS FOR THE MARICOPA COUNTY PM-10 NONATTAINMENT AREA. EACH FORECAST SHALL IDENTIFY A LOW, MODERATE OR HIGH RISK OF DUST GENERATION FOR THE NEXT FIVE CONSECUTIVE DAYS AND SHALL BE ISSUED BY NOON ON EACH DAY THE FORECAST IS GENERATED. AT A MINIMUM, THE FORECASTS SHALL BE POSTED ON THE DEPARTMENT'S WEBSITE AND DISTRIBUTED ELECTRONICALLY. WHEN DEVELOPING THESE FORECASTS, THE DEPARTMENT SHALL CONSIDER ALL OF THE FOLLOWING:

(a) PROJECTED METEOROLOGICAL CONDITIONS FOR THE MARICOPA COUNTY AREA, INCLUDING ALL OF THE FOLLOWING:

(i) WIND SPEED AND DIRECTION.

(ii) STAGNATION.

(iii) RECENT PRECIPITATION.

(iv) POTENTIAL FOR PRECIPITATION.

(b) EXISTING CONCENTRATIONS OF AIR POLLUTION AT THE TIME OF THE FORECAST.

(c) HISTORIC AIR POLLUTION CONCENTRATIONS THAT HAVE BEEN OBSERVED DURING METEOROLOGICAL CONDITIONS SIMILAR TO THOSE THAT ARE PREDICTED TO OCCUR IN THE FORECAST.

Sec. 2. Section 49-457, Arizona Revised Statutes, is amended to read:

49-457. Agricultural best management practices committee;
members; powers; permits; enforcement; preemption;
definitions

A. A best management practices committee for regulated agricultural activities is established.

B. The committee shall consist of:

1. The director of environmental quality or the director's designee.

2. The director of the Arizona department of agriculture or the director's designee.

3. The dean of the college of agriculture of the university of Arizona or the dean's designee.

4. The state director of the United States natural resources conservation service or the director's designee.

5. One person actively engaged in the production of citrus.

6. One person actively engaged in the production of vegetables.

7. One person actively engaged in the production of cotton.

8. One person actively engaged in the production of alfalfa.

9. One person actively engaged in the production of grain.

1 10. One soil taxonomist from the university of Arizona college of
2 agriculture.

3 11. One person actively engaged in the operation of a beef cattle feed
4 lot.

5 12. One person actively engaged in the operation of a dairy.

6 13. One person actively engaged in the operation of a poultry facility.

7 14. One person actively engaged in the operation of a swine facility.

8 15. One person who is employed by a county air quality department or
9 agency.

10 C. The governor shall appoint the members designated pursuant to
11 subsection B, paragraphs 5 through 15 of this section for a term of six
12 years. Members may be reappointed. Members are not entitled to compensation
13 for their services but are entitled to receive reimbursement of expenses
14 pursuant to title 38, chapter 4, article 2.

15 D. The committee shall elect a chairman from the appointed members to
16 serve a two year term.

17 E. The committee shall meet at the call of the chairman or at the
18 request of a majority of the appointed members.

19 F. The department of environmental quality, the Arizona department of
20 agriculture and the college of agriculture of the university of Arizona shall
21 cooperate with and provide technical assistance and any necessary information
22 to the committee. The department of environmental quality shall provide the
23 necessary staff support and meeting facilities for the committee.

24 G. A person who commences a regulated agricultural activity after
25 December 31, 2000 shall comply with the general permit within eighteen months
26 of commencing the activity.

27 H. The committee shall adopt, by rule, an agricultural general permit
28 specifying best management practices, INCLUDING RECORD KEEPING AND REPORTING
29 REQUIREMENTS, for regulated agricultural activities to reduce PM-10
30 particulate emissions. A person who is subject to an agricultural general
31 permit pursuant to this section is not subject to a permit issued pursuant to
32 section 49-426 except as provided in subsection K of this section. The
33 committee shall adopt by rule a list of best management practices, at least
34 ONE OF WHICH SHALL BE USED IN AREAS DESIGNATED AS MODERATE NONATTAINMENT FOR
35 PM-10 PARTICULATE MATTER AND AT LEAST two of which shall be used IN AREAS
36 DESIGNATED AS SERIOUS NONATTAINMENT FOR PM-10 PARTICULATE MATTER, to
37 demonstrate compliance with applicable provisions of the general
38 permit. Best management practices may vary within the regulated area,
39 according to regional or geographical conditions or cropping patterns.

40 I. If the director determines that a person who is engaged in a
41 regulated activity is not in compliance with the general permit, and that
42 person has not previously been subject to a compliance order issued pursuant
43 to this section, the director may serve on the person by certified mail an
44 order requiring compliance with the general permit and notifying the person
45 of the opportunity for a hearing pursuant to title 41, chapter 6, article 10.

1 The order shall state with reasonable particularity the nature of the
2 noncompliance and shall specify that the person has a period that the
3 director determines is reasonable, but is not less than sixty days, to submit
4 a plan to the supervisors of the natural resource conservation district in
5 which the person engages in the regulated activity that specifies the best
6 management practices from among those adopted in rule pursuant to subsection
7 H of this section that the person will use to comply with the general permit.

8 J. If the director determines that a person who is engaged in a
9 regulated activity is not in compliance with the general permit, and that
10 person has previously submitted a plan pursuant to subsection I of this
11 section, the director may serve on the person by certified mail an order
12 requiring compliance with the general permit and notifying the person of the
13 opportunity for a hearing pursuant to title 41, chapter 6, article 10. The
14 order shall state with reasonable particularity the nature of the
15 noncompliance and shall specify that the person has a period that the
16 director determines is reasonable, but is not less than sixty days, to submit
17 a plan to the department that specifies the best management practices from
18 among those adopted in rule pursuant to subsection H of this section that the
19 person will use to comply with the general permit.

20 K. If a person fails to comply with the plan submitted pursuant to
21 subsection J of this section, the director may revoke the agricultural
22 general permit for that person and require that the person obtain an
23 individual permit pursuant to section 49-426. A revocation becomes effective
24 after the director has provided the person with notice and an opportunity for
25 a hearing pursuant to title 41, chapter 6, article 10.

26 L. The committee may periodically reexamine, evaluate and modify best
27 management practices. Any approved modifications shall be submitted to the
28 United States environmental protection agency as a revision to the applicable
29 implementation plan.

30 M. The committee shall develop and commence an education program. The
31 education program shall be conducted by the director or the director's
32 designee or designees.

33 N. A best management practice adopted pursuant to this section does
34 not affect any applicable requirements in an applicable implementation plan
35 or any other applicable requirements of the clean air act, including section
36 110(1) of the act (42 United States Code section 7410(1)).

37 O. The regulation of PM-10 particulate emissions produced by regulated
38 agricultural activities is a matter of statewide concern. Accordingly, this
39 section preempts further regulation of regulated agricultural activities by a
40 county, city, town or other political subdivision of this state.

41 P. For the purposes of this section, unless the context otherwise
42 requires:

43 1. "Agricultural general permit" means best management practices that:

44 (a) Reduce PM-10 particulate emissions from tillage practices and from
45 harvesting on a commercial farm.

1 (b) Reduce PM-10 particulate emissions from those areas of a
2 commercial farm that are not normally in crop production.
3 (c) Reduce PM-10 particulate emissions from those areas of a
4 commercial farm that are normally in crop production including prior to plant
5 emergence and when the land is not in crop production.
6 (d) REDUCES PM-10 PARTICULATE EMISSIONS FROM THOSE AREAS OF A
7 COMMERCIAL FARM UNDERGOING SIGNIFICANT AGRICULTURAL EARTHMOVING ACTIVITIES.
8 ~~(d)~~ (e) Reduce PM-10 particulate emissions from the activities of a
9 dairy, a beef cattle feed lot, a poultry facility or a swine facility,
10 including practices relating to the following:
11 (i) Unpaved access connections.
12 (ii) Unpaved roads or feed lanes.
13 (iii) Animal waste handling and transporting.
14 (iv) Arenas, corrals and pens.
15 ~~(e)~~ (f) Only in those regulated areas that are established after June
16 1, 2009, as prescribed in paragraph 6, subdivision (c) of this subsection,
17 reduce PM-10 particulate emissions from the activities of an irrigation
18 district governed by title 48, chapter 19 and affecting those lands and
19 facilities that are under the jurisdiction and control of the district,
20 including practices relating to the following:
21 (i) Unpaved operation and maintenance roads.
22 (ii) Canals.
23 (iii) Unpaved utility access roads.
24 2. "Applicable implementation plan" means that term as defined in 42
25 United States Code section 7601(q).
26 3. "Best management practices" means techniques that are verified by
27 scientific research and that on a case by case basis are practical,
28 economically feasible and effective in reducing PM-10 particulate emissions
29 from a regulated agricultural activity.
30 4. "Maricopa PM-10 particulate nonattainment area" means the Phoenix
31 planning area as set forth in 40 Code of Federal Regulations section 81.303.
32 5. "Regulated agricultural activities" means:
33 (a) Commercial farming practices that may produce PM-10 particulate
34 emissions within the regulated area, including activities of a dairy, a beef
35 cattle feed lot, a poultry facility and a swine facility.
36 (b) Only in those regulated areas that are established after June 1,
37 2009, as prescribed in paragraph 6, subdivision (c) of this subsection,
38 activities of an irrigation district that is governed by title 48,
39 chapter 19.
40 6. "Regulated area" means any of the following:
41 (a) The Maricopa PM-10 particulate nonattainment area.
42 (b) Any portion of area A that is located in a county with a
43 population of two million or more persons.
44 (c) Any other PM-10 particulate nonattainment area established in this
45 state on or after June 1, 2009.

1 Sec. 3. Title 49, chapter 3, article 2, Arizona Revised Statutes, is
2 amended by adding section 49-457.05, to read:

3 49-457.05. Dust action general permit; best management
4 practices; applicability; definitions

5 A. THIS SECTION APPLIES IN A COUNTY WITH A POPULATION OF TWO MILLION
6 OR MORE PERSONS OR ANY PORTION OF A COUNTY WITHIN AN AREA DESIGNATED BY THE
7 ENVIRONMENTAL PROTECTION AGENCY AS A SERIOUS PM-10 NONATTAINMENT AREA OR A
8 MAINTENANCE AREA THAT WAS DESIGNATED AS A SERIOUS PM-10 NONATTAINMENT AREA.

9 B. THE DIRECTOR SHALL ISSUE A DUST ACTION GENERAL PERMIT FOR REGULATED
10 ACTIVITIES, WHICH SHALL SPECIFY THE BEST MANAGEMENT PRACTICES NECESSARY TO
11 REDUCE OR TO PREVENT PM-10 PARTICULATE EMISSIONS AS SOON AS PRACTICABLE
12 BEFORE AND DURING A DAY THAT IS FORECAST TO BE AT HIGH RISK OF DUST
13 GENERATION UNDER A FORECAST ISSUED BY THE DEPARTMENT PURSUANT TO SECTION
14 49-424.

15 C. A PERSON THAT HAS A PERMIT ISSUED BY THE DIRECTOR OR A CONTROL
16 OFFICER FOR THE CONTROL OF FUGITIVE DUST FROM DUST-GENERATING OPERATIONS IS
17 NOT REQUIRED TO OBTAIN A DUST ACTION GENERAL PERMIT UNDER SUBSECTION D OF
18 THIS SECTION, EXCEPT THAT THE PERSON SHALL IMPLEMENT THE CONTROL MEASURES
19 REQUIRED IN THE PERMIT ISSUED BY THE DIRECTOR OR CONTROL OFFICER, INCLUDING
20 THOSE MEASURES RELATED TO WIND, TO REDUCE OR TO PREVENT PM-10 PARTICULATE
21 EMISSIONS AS SOON AS PRACTICABLE BEFORE AND DURING A DAY THAT IS FORECAST TO
22 BE AT HIGH RISK OF DUST GENERATION UNDER A FORECAST ISSUED BY THE DEPARTMENT
23 PURSUANT TO SECTION 49-424. FAILURE TO IMPLEMENT A CONTROL MEASURE UNDER
24 THIS SUBSECTION SHALL ONLY BE ENFORCED BY THE DIRECTOR OR CONTROL OFFICER
25 THAT ISSUED THE PERMIT. THE DIRECTOR OR CONTROL OFFICER SHALL NOT RECOVER
26 PENALTIES FOR VIOLATIONS OF BOTH THIS SUBSECTION AND THE PERMIT BASED ON THE
27 SAME ACT OR OMISSION.

28 D. A DUST ACTION GENERAL PERMIT MAY BE REQUIRED FOR ANY PERSON THAT
29 OWNS OR CONDUCTS A DUST-GENERATING OPERATION THAT IS FOUND BY THE DIRECTOR TO
30 HAVE FAILED TO CHOOSE AND IMPLEMENT AN APPLICABLE BEST MANAGEMENT PRACTICE
31 LISTED IN THE DUST ACTION GENERAL PERMIT AS SOON AS PRACTICABLE BEFORE AND
32 DURING A DAY THAT IS FORECAST TO BE AT HIGH RISK OF DUST GENERATION.

33 E. THE DUST ACTION GENERAL PERMIT SHALL:

34 1. CONFORM TO THE REQUIREMENTS OF SECTION 49-426, SUBSECTION H,
35 PARAGRAPHS 2 THROUGH 6.

36 2. SPECIFY CATEGORIES AND LISTS OF BEST MANAGEMENT PRACTICES THAT MAY
37 VARY ACCORDING TO REGIONAL, SITE-SPECIFIC OR ACTIVITY-SPECIFIC CONDITIONS.

38 3. INCLUDE THE APPROPRIATE MONITORING, RECORD KEEPING AND REPORTING
39 REQUIREMENTS TO ENSURE THE ENFORCEABILITY OF THE PROVISIONS.

40 4. SPECIFY THE PROCESS BY WHICH THE DIRECTOR WILL DETERMINE THAT A
41 PERSON HAS FAILED TO CHOOSE AND IMPLEMENT AN APPLICABLE BEST MANAGEMENT
42 PRACTICE AND IS THEREFORE SUBJECT TO A PERMIT PRESCRIBED BY SUBSECTION D OF
43 THIS SECTION. THE PROCESS SHALL INCLUDE A MEANS OF PROVIDING NOTICE TO THE
44 PERSON OF THE PERSON'S FAILURE AND A MEANS BY WHICH THE PERSON MAY CHALLENGE
45 THE DETERMINATION.

1 5. EXPIRE AFTER A PERIOD OF FIVE YEARS, AND MAY BE RENEWED AS
2 PRESCRIBED BY THIS SECTION.

3 F. THE DIRECTOR MAY PERIODICALLY REEXAMINE, EVALUATE AND MODIFY THE
4 DUST ACTION GENERAL PERMIT AS PRESCRIBED IN SECTION 49-426, SUBSECTION H,
5 PARAGRAPHS 2 THROUGH 6. AFTER APPROVAL BY THE DIRECTOR, ANY MODIFICATIONS TO
6 THE DUST ACTION GENERAL PERMIT SHALL BE PROVIDED TO THE CONTROL OFFICER AND
7 SHALL BE SUBMITTED TO THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AS A
8 REVISION TO THE APPLICABLE IMPLEMENTATION PLAN.

9 G. A BEST MANAGEMENT PRACTICE ADOPTED PURSUANT TO THIS SECTION DOES
10 NOT AFFECT ANY APPLICABLE REQUIREMENT IN AN APPLICABLE IMPLEMENTATION PLAN OR
11 ANY OTHER APPLICABLE REQUIREMENTS OF THE CLEAN AIR ACT, INCLUDING SECTION
12 110(1) OF THE ACT (42 UNITED STATES CODE SECTION 7410(1)).

13 H. VOLUNTARY BEST MANAGEMENT PRACTICES THAT ARE IMPLEMENTED DURING A
14 DAY THAT IS FORECAST BY THE DEPARTMENT PURSUANT TO SECTION 49-424 TO BE AT
15 MODERATE RISK FOR DUST GENERATION SHALL BE CONSIDERED BY THE DIRECTOR OR
16 CONTROL OFFICER AS A MITIGATING FACTOR IN ANY ACTION TAKEN AGAINST THAT
17 PERSON FOR FAILING TO IMPLEMENT A DUST CONTROL MEASURE FOR THAT DAY AS
18 REQUIRED BY THIS CHAPTER, A RULE OR ORDINANCE ADOPTED PURSUANT TO THIS
19 CHAPTER OR A PERMIT ISSUED PURSUANT TO THIS CHAPTER.

20 I. FOR THE PURPOSES OF THIS SECTION:

21 1. "APPLICABLE IMPLEMENTATION PLAN" MEANS THAT TERM AS DEFINED IN 42
22 UNITED STATES CODE SECTION 7602(q).

23 2. "BEST MANAGEMENT PRACTICES" MEANS TECHNIQUES THAT ARE VERIFIED BY
24 SCIENTIFIC RESEARCH AND THAT ON A CASE-BY-CASE BASIS ARE PRACTICAL,
25 ECONOMICALLY FEASIBLE AND EFFECTIVE IN REDUCING PM-10 PARTICULATE EMISSIONS
26 FROM A REGULATED ACTIVITY.

27 3. "CONTROL OFFICER" HAS THE SAME MEANING PRESCRIBED IN SECTION
28 49-471.

29 4. "DISTURBED SURFACE AREA" MEANS A PORTION OF THE EARTH'S SURFACE OR
30 MATERIAL THAT IS PLACED ON THE EARTH'S SURFACE THAT HAS BEEN PHYSICALLY
31 MOVED, UNCOVERED, DESTABILIZED OR OTHERWISE MODIFIED FROM ITS UNDISTURBED
32 NATIVE CONDITION IF THE POTENTIAL FOR THE EMISSION OF FUGITIVE DUST IS
33 INCREASED BY THE MOVEMENT, DESTABILIZATION OR MODIFICATION.

34 5. "DUST-GENERATING OPERATION" MEANS DISTURBED SURFACE AREAS,
35 INCLUDING THOSE OF OPEN AREAS OR VACANT LOTS THAT ARE NOT DEFINED AS
36 AGRICULTURAL LAND AND ARE NOT USED FOR AGRICULTURAL PURPOSES ACCORDING TO
37 SECTIONS 42-12151 AND 42-12152, OR ANY OTHER AREA OR ACTIVITY CAPABLE OF
38 GENERATING FUGITIVE DUST, INCLUDING THE FOLLOWING:

39 (a) LAND CLEARING, MAINTENANCE AND LAND CLEAN-UP USING MECHANIZED
40 EQUIPMENT.

41 (b) EARTHMOVING.

42 (c) WEED ABATEMENT BY DISCING OR BLADING.

43 (d) EXCAVATING.

44 (e) CONSTRUCTION.

45 (f) DEMOLITION.

1 (g) BULK MATERIAL HANDLING, INCLUDING HAULING, TRANSPORTING, STACKING,
2 LOADING AND UNLOADING OPERATIONS.

3 (h) STORAGE OR TRANSPORTING OPERATIONS, INCLUDING STORAGE PILES.

4 (i) OPERATION OF OUTDOOR EQUIPMENT.

5 (j) OPERATION OF MOTORIZED MACHINERY.

6 (k) ESTABLISHING OR USING STAGING AREAS, PARKING AREAS, MATERIAL
7 STORAGE AREAS OR ACCESS ROUTES.

8 (l) ESTABLISHING OR USING UNPAVED HAUL OR ACCESS ROADS.

9 (m) INSTALLING INITIAL LANDSCAPES USING MECHANIZED EQUIPMENT.

10 6. "FUGITIVE DUST" MEANS PARTICULATE MATTER THAT COULD NOT REASONABLY
11 PASS THROUGH A STACK, CHIMNEY, VENT OR OTHER FUNCTIONALLY EQUIVALENT OPENING,
12 THAT CAN BE ENTRAINED IN THE AMBIENT AIR AND THAT IS CAUSED BY HUMAN OR
13 NATURAL ACTIVITIES, INCLUDING THE MOVEMENT OF SOIL, VEHICLES, EQUIPMENT,
14 BLASTING AND WIND. FUGITIVE DUST DOES NOT INCLUDE PARTICULATE MATTER EMITTED
15 DIRECTLY FROM THE EXHAUST OF MOTOR VEHICLES AND OTHER INTERNAL COMBUSTION
16 ENGINES, FROM PORTABLE BRAZING, SOLDERING OR WELDING EQUIPMENT OR FROM PILE
17 DRIVERS.

18 7. "REGULATED ACTIVITY" MEANS ALL DUST-GENERATING OPERATIONS EXCEPT
19 FOR THE FOLLOWING:

20 (a) NORMAL FARM CULTURAL PRACTICES AS PRESCRIBED IN SECTION 49-504,
21 PARAGRAPH 4 OR SECTION 49-457.

22 (b) EMERGENCY ACTIVITIES THAT MAY DISTURB THE SOIL AND THAT ARE
23 CONDUCTED BY ANY UTILITY OR GOVERNMENT AGENCY IN ORDER TO PREVENT PUBLIC
24 INJURY OR TO RESTORE CRITICAL UTILITIES TO A FUNCTIONAL STATUS.

25 (c) ESTABLISHMENT OF INITIAL LANDSCAPES WITHOUT THE USE OF MECHANIZED
26 EQUIPMENT, CONDUCTING LANDSCAPE MAINTENANCE WITHOUT THE USE OF MECHANIZED
27 EQUIPMENT AND PLAYING ON OR MAINTAINING A FIELD USED FOR NONMOTORIZED SPORTS,
28 EXCEPT THAT THESE ACTIVITIES SHALL NOT INCLUDE GRADING OR TRENCHING PERFORMED
29 TO ESTABLISH INITIAL LANDSCAPES OR TO REDESIGN EXISTING LANDSCAPES.

30 (d) ROOFTOP OPERATIONS FOR CUTTING, DRILLING, GRINDING OR CORING
31 ROOFING TILE IF THAT ACTIVITY IS OCCURRING ON A PITCHED ROOF.

32 Sec. 4. Agricultural best management practices committee;
33 exempt rule making; publication

34 Notwithstanding title 41, chapter 6, article 3, Arizona Revised
35 Statutes, the best management practices committee for regulated agricultural
36 activities established under section 49-457, Arizona Revised Statutes, may
37 adopt revisions to the rules required by section 49-457, Arizona Revised
38 Statutes, as exempt rules with an immediate effective date in compliance with
39 section 41-1032, Arizona Revised Statutes. The rules shall have an immediate
40 effective date. Exempt rules are exempt from the provisions in title 41,
41 chapter 6, article 3, Arizona Revised Statutes, except that the committee
42 shall file a notice of exempt rulemaking with the secretary of state who
43 shall publish the rules in the Arizona administrative register and the
44 Arizona administrative code.

1 Sec. 5. Legislative findings; intent

2 A. The legislature finds the following:

3 1. Previous particulate matter ten microns in size and smaller (PM-10)
4 air quality plans for the Maricopa county area, including the Maricopa
5 association of governments 2007 five per cent plan for PM-10 for the Maricopa
6 county nonattainment area, relied heavily on reductions in particulate matter
7 emissions from improving the effectiveness of existing rules for construction
8 and other sources.

9 2. As a direct result of the air quality plans that have been
10 submitted between 1990 and 2009, the annual average concentration of PM-10
11 within the Phoenix area has declined approximately twenty-five per cent, even
12 while the population in the Phoenix area nearly doubled during that same time
13 period.

14 3. The air quality monitor near 43rd Avenue and Broadway Road, in
15 Phoenix, Arizona, is considered to be a location where the maximum
16 concentrations of PM-10 are expected to occur.

17 4. If a monitor records more than three exceedances of the national
18 air quality standard for PM-10 over the course of a three year period, and
19 none of those exceedances are excused under EPA's exceptional events rule,
20 the area represented by the monitor is considered to be in nonattainment for
21 the PM-10 standard.

22 5. In 2009, there were seven exceedances of the national air quality
23 standard for PM-10 at the monitor near 43rd Avenue and Broadway Road, in
24 Phoenix, Arizona. All seven of these events were related to meteorological
25 conditions. Meteorological conditions that may lead to a risk of dust
26 generation include wind speed and direction, stagnation, recent precipitation
27 and potential for precipitation.

28 6. In 2010, although there was one exceedance of the national air
29 quality standard for PM-10 at another monitor in Maricopa county, there were
30 zero exceedances of that standard at the monitor near 43rd Avenue and
31 Broadway Road, in Phoenix Arizona.

32 7. To date in 2011, there has been one exceedance of the national air
33 quality standard for PM-10 recorded by a separate monitor in Maricopa county,
34 but there have been zero exceedances of that standard at the monitor near
35 43rd Avenue and Broadway Road, in Phoenix, Arizona.

36 8. To satisfy EPA's requirement to achieve attainment with the
37 national air quality standard for PM-10 in the Maricopa county area, it is
38 necessary to further reduce or to prevent PM-10 particulate emissions,
39 especially during those days at high risk of dust generation.

40 B. The legislature declares that the intent of this act is as follows:

41 1. Require the reduction or prevention of PM-10 particulate emissions
42 from both permitted and unpermitted sources of PM-10 particulate emissions.

43 2. Require the department of environmental quality to predict days
44 that are at high risk of dust generation and provide that information to any
45 source that could potentially emit PM-10 particulate emissions.

1 3. Require the establishment of best management practices for those
2 sources that are not already subject to dust prevention requirements during
3 high wind events. When establishing the best management practices, those
4 control measures that apply to dust-generating operations in county
5 ordinances or permits issued by the control officer shall be considered.

6 4. Require application of the existing control measures required in
7 county permits and the applicable best management practices adopted pursuant
8 to this act to reduce or to prevent dust emissions as soon as practicable
9 before and during a day that the department of environmental quality predicts
10 to be at high risk of dust generation.

11 5. Require the department of environmental quality, the Maricopa
12 county air quality department and other governmental entities to develop and
13 implement a communications plan to educate unpermitted sources regarding
14 their new obligations.

15 6. Require the director of the department of environment quality to
16 delegate the authority under section 49-457.05, subsection D, Arizona Revised
17 Statutes, as added by this act, to the appropriate control officer.

APPROVED BY THE GOVERNOR APRIL 25, 2011.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 25, 2011,

Passed the House March 1, 2011

by the following vote: 53 Ayes,

4 Nays, 3 Not Voting

Speaker of the House

Chief Clerk of the House

Passed the Senate April 19, 2011

by the following vote: 50 Ayes,

0 Nays, 0 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

day of _____, 20_____

at _____ o'clock M.

Secretary to the Governor

Approved this _____ day of _____

at _____ o'clock _____ M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

~~This Bill received by the Secretary of State~~

this _____ day of _____, 20____

at _____ o'clock ~~_____~~ M.

Secretary of State

H.B. 2208

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

April 20, 2011,
by the following vote: 59 Ayes,

0 Nays, 1 Not Voting

[Signature]
Speaker of the House
Cheryl Laube
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

20 day of April, 2011,

at 8:30 o'clock A. M.

[Signature]
Secretary to the Governor

Approved this 25th day of

April, 2011,

at 12:05 o'clock P. M.

[Signature]
Governor of Arizona

H.B. 2208

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 25th day of April, 2011,

at 2:45 o'clock M.

[Signature]
Secretary of State